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JOHN J. COTA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Case No. CR 08-0160 SI

Plaintiff,

V.

JOHN J. COTA
and
FLEET MANAGEMENT, INC.,

**DEFENDANT JOHN J. COTA'S
AMENDED NOTICE OF MOTION AND
MOTION TO CHANGE VENUE OR
ALTERNATIVELY, FOR SPECIAL JURY
SELECTION PROCEDURES**

Date: September 22, 2008

Time: 11:00 am

Judge: Honorable Susan Illston

Speedy Trial Act; Excludable Time Through Disposition, 18 U.S.C. § 3161(h)(1)(F)

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that at 11:00 a.m. on September 22, 2008 or as soon thereafter as counsel may be heard in the above entitled Court, Defendant JOHN J. COTA ("Captain Cota") will and hereby does move this Court for an order to change venue or alternatively, for special jury selection procedures, in this matter pursuant to Rule 12(b)(2) and (3) of the Federal Rules of

1 Criminal Procedure. Specifically, Captain Cota seeks a change of venue or alternatively, for special
2 jury selection procedures based on the grounds that there has been overwhelming prejudicial
3 publicity in the Bay Area regarding this incident making it difficult, if not impossible for him to
4 receive a fair trial before an unbiased jury.

5 This motion is based on this Notice of Motion and Motion, the attached Affidavit of Craig
6 New and exhibits in support thereof, the complete files and records in this matter, and upon such
7 other matters as may be presented to the Court at the time of the hearing.

8 Respectfully submitted,

9
10 DATED: August 22, 2008.

KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP

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12 By: /s/ Jeffrey L. Bornstein
13

14 Jeffrey L. Bornstein, Esq.
15 Barry M. Hartman, Esq., *Admitted Pro Hac Vice*
16 Luke G. Anderson Esq.
Christopher R. Tate, Esq., *Pro Hac Vice pending*

17 Attorneys for Defendant
JOHN J. COTA
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PROOF OF SERVICE

I am employed in the County of San Francisco, State of California by a member of the Bar of this Court, at whose direction this service was made. I am over the age of 18 and not a party to the within action. My business address is 55 Second Street, Suite 1700, San Francisco, CA 94105. On August 22, 2008, I served the document(s) described as:

**DEFENDANT JOHN J. COTA'S AMENDED NOTICE OF MOTION AND MOTION TO
CHANGE VENUE OR ALTERNATIVELY, FOR SPECIAL JURY SELECTION
PROCEDURES**

on the parties to this action named on the attached service list by the method described below.

(BY PERSONAL SERVICE) I caused a true and correct copy of said document(s) to be served by hand to the addressee(s) listed above, with the name and address of the person served shown on the envelope.

(BY OVERNIGHT DELIVERY) I enclosed a true and correct copy of said document(s) in an envelope/package provided by an overnight delivery carrier addressed to the addressee(s) listed above, sealed it, and placed it for collection and overnight delivery following the ordinary business practices of Kirkpatrick & Lockhart Preston Gates Ellis LLP. I am readily familiar with the firm's practice of collecting and processing correspondence for overnight delivery. On the same day that correspondence is placed for collection and overnight delivery, it is collected by an overnight delivery carrier. Delivery fees are pre-paid or provided for in accordance with the ordinary business practices of Kirkpatrick & Lockhart Preston Gates Ellis LLP.

- (BY ELECTRONIC TRANSMISSION) I transmitted a true and correct copy of said document(s) by electronic mail to the offices of the addressee(s). I did not receive, within a reasonable time after the transmission, any message or other indication that the transmission was unsuccessful.

(BY FACSIMILE) I transmitted a true and correct copy of said document(s) by facsimile to the offices of the addressee(s). Upon completion of the facsimile transmission, a transmission report was issued showing the transmission was complete and without error.

(BY U.S. MAIL) I enclosed a true and correct copy of said document(s) in an envelope addressed to the addressee(s) listed above and placed it for collection and mailing following the ordinary business practices of Kirkpatrick & Lockhart Preston Gates Ellis LLP. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service with postage fully prepaid at San Francisco, California.

Executed on August 22, 2008 at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s Michelle Crawford

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